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# The Political Economy Of The Human Right To Water

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# *THE POLITICAL ECONOMY OF THE HUMAN RIGHT TO WATER*

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ABSTRACT

Water being essential to human survival, a political economy directed to satisfying human basic needs, should be especially concerned with the issue of water availability and distribution. Why is there such inequality in its distribution? This inequality represents a serious violation of a human right, as it will be developed in the paper and therefore should not be tolerated. The issue this paper wishes to address concerns the role played by economics in the unequal assertion of every people's human right to clean water.

First of all, what are we talking about when we talk about economics? A rapid overview can identify at least twenty schools of economic thought, from neoclassic to evolutionary, from Marxist to post-Keynesian. If one had to be accurate, a paper on the impact of economics on the human right to water human rights would then have to be divided in at least twenty chapters. The sort of economics we will be referring to in this paper results from a considerably narrower point of view: economics, here, will be mainstream economics, the school of thought which dominates not only within the academia, but also within the political cabinets and the media. More specifically, this paper will examine how mainstream economics discourse can be conflictive with human rights in general and the right to water in particular.

First, within mainstream economic analysis satisfying wants implies the use of concepts like prices, supply and demand, or cost and benefit, and therefore, the issue is ability to pay, in other words purchasing power. With rights, on the other hand, the issue is quite different; the heart of the matter here concerns entitlement, the criteria according to which an individual should qualify to enjoy rights, purchasing power being obviously excluded as well as the consequences of the use of such criteria. Therefore it is perfectly admissible for economics to exclude from access to water those that do not have the capability to pay violating the basic principles of human rights.

Second, by putting emphasis on the market as the default regulation institution, mainstream economics also hinders the human right to water because on one hand market is inefficient in reaching universal coverage of water supply and on the other hand it is an unaccountable institution and human rights purveyors need by principle to be submitted to democratic control.

Keywords: Human Rights, Right to Water, Economic Theory, Market.
JEL Classification: A13, B40, I30, Q25

## Introduction

Water is at the origin of life on earth, no organism can live without water under any of its forms; as a mater of fact all living beings, humans included, live in an aqueous environment. For a long time water was considered an element and it was only in the eighteenth century with the works of Henry Cavendish that it has been demonstrated that water consisted, after all, in a combination of two atoms of Hydrogen and one of Oxygen. Two centuries later, as a result of the development of research in social sciences, other decompositions of water have been revealed. Indeed, we know now that water is also an economic, social and cultural good, and, if only it mattered, all there is left to discover is the exact proportion in which it can be decomposed as a good intended to satisfy the ever-growing range of human needs.

Now, despite water being essential to human life, in its many dimensions, access to it is far from being guaranteed to everybody, and amidst those communities which benefit from this access, water is also far from being distributed equitably. The World Health Organization believes that more than a billion people are deprived of a basic access to water (WHO, 2001:1) The United Nations Organization, estimates that about 2.3 billion people suffer from diseases connected to water, in other words to both its shortage and poor quality (UN, 1997: 39).

Water being essential to human survival, a political economy directed to satisfying human basic needs should be especially concerned with the issue of water availability and distribution. In what concerns the satisfaction of basic needs, one could fairly safely state that it is relatively easy and cheap to provide access to water to everybody. Why is there such inequality in its distribution then? In many developing countries where access to water is guaranteed inequality prevails through discriminatory pricing, for instance. Indeed, poorer households often pay more for water than richer ones. According to the 2006 Human Development report households living in slums pay five to ten times more for water than wealthier households in developing world cities (UNDP, 2006:10). This inequality represents a serious violation of a human right, as it will be developed further ahead, and, therefore, should not be tolerated.

The issue this paper wishes to address concerns the role played by economics in the unequal assertion of every people's human right to clean water. First of all, what are we talking about when we talk about economics? A rapid overview can identify at least twenty schools of economic thought, from neoclassic to evolutionary, from Marxist to post-Keynesian. If one had to be accurate, a paper on the impact of economics on the human right to water would, then, have to be divided in at least twenty chapters. The sort of economics we will be referring to in this paper results from a considerably narrower point of view. Economics, here, will be mainstream economics, the school of thought which dominates not only within the academia, but also within the political cabinets and the media.

Mainstream economics, as any other school of thought, is characterized by its particular methodology, its particular rationality and its particular analytical weaponry. Mainstream economics is, therefore, individualistic, utilitarian and equilibrium driven, and, finally, excessively worried with mathematical formalization. Being individualistic mainstream economics defines its goals in terms of the pursuit of isolated individual's personal interest, social welfare, for instance, being the sum of each individual's welfare. Being utilitarian and equilibrium driven, mainstream economics is oriented towards the maximization of the individual's utility, in short monetary income, and the social equilibrium of supply and demand, the market, with its automatic paraphernalia, being the right institution called to regulate this process. Being excessively worried with mathematical formalization, mainstream economics privileges quantitative cause and effect analysis, and unrealistically reduces society's complexity in order to discover scientific laws similar to those governing nature's realm.

More specifically, this paper will examine how mainstream economics discourse can be conflictive with human rights in general and the right to water in particular. In the following lines we will, first of all, confront the satisfaction of wants and the maximization of utility that characterizes economics with the promotion of human rights, and, then, we will show why the ideology of market hegemony preached by mainstream economics is contradictory with this same promotion of human rights, most especially in developing countries. Before engaging into that discussion let us look at water, both as an economic good and a human right.

## Water as an Economic Good

Until the beginning of the second half of the twentieth century the weak demographic pressure put on available resources led people, as well as economists, to take water as a free good, in other words as a good available for consumption according to the principle of the first come first served (Bontems and Rotillon, 1998). However, the fast pace of economic development that has characterized world economy since then boosted water consumption in order to meet all kinds of demands, which implied that water management had to be thought within a frame of scarcity, which, in turn, implied changes in the way water was classified as a good. This fact, along with the shocking gap between supply and demand, implied that the right to water could also be expressed as an economic problem. The first step that must be taken in order to express the right to water as an economic problem consists in identifying what sort of economic good water is. The United Nations explicitly mentions water as a public good, but as this classification could seem to derive from a political discourse rather than from an economic analysis, in order to avoid misunderstandings one should argue more carefully.

Economics divides goods in two main categories, public and private goods. In economics a public good is a good that is non-rivalrous and non-excludable. This means that the consumption of this good by one individual does not reduce the amount of the good left for the consumption of other individuals, and that no individual can effectively be excluded from consuming that good. Take the example of a bowl of strawberries and cream. If one individual eats it, that particular bowl ceases to be available for the consumption of other individuals. It is also possible to prevent an individual from consuming the bowl of strawberries if he is not willing to pay for it. In this case there is rivalry and exclusion which makes our bowl of strawberries and cream a private good. On the contrary breathing air does not significantly reduce the amount of air available to others, nor can people be excluded from breathing. So, air is a public good (in fact, a pure public good).

Now, when economics states that individuals cannot be excluded from breathing air it is not stating a moral imperative, it is just saying that individuals cannot be prevented from breathing air because it is technically impossible to exclude from consumption individuals that are not willing to pay. Indeed, when economics states that an individual cannot be excluded from breathing air it is not alerting to the fact that an individual prevented from breathing air will just die, but plainly pointing to the fact that no individual can make a living out of selling breathing air because there is plenty of free air available. In the real world it is hard to stick to this categorisation of goods, especially when water is concerned.

Indeed, based on the combinations of exclusion and rivalry one can determine two other categories of goods. There are goods that are rivalrous but non-excludable and goods that are excludable but non-rivalrous. Goods that fall into the first group are called common pool goods and goods that fall in the second group, toll or club goods. In the first case it is impossible or very hard to stop people from consuming these goods but the consumption of an individual limits the consumption of another individual. It is the case of fish in the ocean, for instance. One can freely fish in the ocean but the stock is limited and therefore excessive fishery by an individual can prevent another individual from fishing. In the other group, consumption of an individual does not affect the ability of another individual to consume in his turn, but it is possible to exclude individuals from consumption if they are not willing to pay. An often referred example is cable television. By watching a show an individual does not limit the ability of another individual to watch the same or another show, but if an individual does not pay for cable, service is cut. Now, what does this tell us about the classification of water as a good?

From a strict technical point of view classifying water is not an easy task. Sustainable consumption of water in nature, drinking it out of a river or a lake, does not imply rivalry nor does it provoke exclusion, and therefore in these circumstances water should be considered a public good. By sustaining that "Nothing is more useful than water, but it will purchase scarce any thing; scarce any thing can be had in exchange for it" Adam Smith (1776) suggested that water had no price which is another interpretation of a public good. Non-rivalry and non-exclusion are reinforced by the fact that there are no property rights on water in its first state, lets us say natural.

But fresh water may not be unlimited in the planet, especially if pollution and over-consumption continue at the current pace. For this reason it should be more realistic to include water among common pool goods where unsustainability of consumption has been identified in the absence of strict distributive rules. Garrett Hardin in his famous article on the tragedy of commons shows how the inexistence of property rights along with the absence of distributive rules leads to an unsustainable use of a resource (Hardin, 1968), and therefore, in the case of water, to eventually depriving every individual of a human right. Preservation and supply of common pool goods are, consequently, a collective responsibility, and thus, demands the presence of a public authority. The *Tribunal de Las Águas* in Valencia, Spain, is an institution that is more than a thousand years old and it still meets every week to allocate the use of the regional water distribution network for agriculture, demonstrating, once again, the longevity of water's public character.

However, the form under which water appears before consumers today has not much to do with the classification proposed above. Indeed, the great majority of the world's population benefits from water by the intermediation of infrastructures such as plumbing and other forms of collection and distribution. Contrary to water strictly speaking, these infrastructures can be privately appropriated which means that exclusion and rivalry can be simultaneously introduced in water supply. Indeed, one can be excluded from consuming water because one only has access to the water tap if it is wiling to pay, and there is rivalry because one's water tap cannot be used without one's permission. Therefore, technically speaking, in modern times, water could also be considered as a private good like any other.

## Water as a Human Right

The Universal Declaration on Human Rights states in its article 3 the unalienable right to life; a life which other articles take to be more than just plain survival, demanding on the contrary that it should meet the minimum standards of human dignity and that it should be enjoyed with freedom and safety. Well, this right to life demands some access to both those natural resources and manufactured goods that are considered to be indispensable to live according to the requirements described above. Natural resources that fall into this category could then be considered as some sort of common capital for existence (see Petrella, 2004), which implies a specific approach to both its exploitation and its distribution. In this sense, water, under almost all of its forms and its uses, should probably be the first of these resources to be listed among common capital items. Indeed, an adequate amount of safe water is necessary to prevent death by dehydration, to reduce the risk of diseases related to water and to attend to many other sorts of indispensable needs like farming or manufacturing, cooking or personal and domestic hygiene to which one should also add a wide range of cultural needs such as the performance of religious rites or the plain enjoyment of leisure.

It shouldn't come as a surprise that the imperious satisfaction of these needs has given birth to several pleads sustaining that water ought to be considered a human right. On April 2nd 1998, a group of international personalities, such as former presidents of Portugal and Argentina, respectively Mário Soares and Raúl Alfonsin, issued a manifesto in which water was declared a common good belonging to all the inhabitants on earth and an unalienable individual and collective right. In response all pleads, and in the send of the International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted by the general assembly of the United Nations in 1966, the United Nations Committee on Economic, Social and Cultural Rights proclaimed, in November 2002, the Right to Water as a substantive implication of the implementation of the ICESCR, resulting from an extensive interpretation of its articles 11 and 12.

These articles state the following:

Article 11

1. The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right,

recognizing to this effect the essential importance of international co-operation based on free consent.

Article 12

1. The States Parties to the present Covenant recognize the right of everyone to the enjoyment of the highest attainable standard of physical and mental health.

2. The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:

(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

(b) The improvement of all aspects of environmental and industrial hygiene;

In the introduction of the text in which these substantive implications are commented, it is said that water is a limited natural resource and a public good fundamental for life and health, that this human right to water is indispensable for leading a life in human dignity and that it is a prerequisite for the realization of other human rights (UN, 2002: 1). According to this committee the human right to water entitles everyone to sufficient, safe, acceptable, physically accessible and affordable water for personal and domestic use.

The right to water, therefore, as the great majority of economic, social, and cultural rights has both a quantitative and a qualitative dimension. From the quantitative point of view it is stated that everyone should be provided with an amount of water sufficient to meet human needs according to WHO parameters. This quantity is not easy to determine because it can vary according to cultural idiosyncrasies and geographical location, but it is assumed that a person needs a minimum of 20 litres per day (UNDP, 2006: 8). This amount seems derisive when one knows that citizens in western developed countries spend more than that in just flushing their toilets, but even this meagre quantity is not accessible to many people in the planet. From the qualitative point of view, in turn, it is stressed that the amount of water provided should be safe, in other words its consumption should not put human health at risk. As commonly in human rights, it is added that no discrimination, based on gender, religion, or social condition, among others, should be tolerated in the access to this same water.

Now, if water strictly speaking can be classified as a public or a common pool good, and tap water as private, the entire process of providing safe water to people displays a double character. Nevertheless, because water is also a human right, one is technically forced to admit the preponderance of its public character. Indeed, if water constitutes a human right, because it is essential to life and a prerequisite for the enjoyment of other human rights, the excludable character of private goods, means, therefore, that excluding an individual from access to water based on purchasing power is equivalent to depriving that same individual of a universal human right. This immediately transforms the inability to get water into a rights violation, and consequently into a major political issue.

## The Conflicting Logics of Economics and Human Rights

We will now argue that a political economy based on mainstream economics is contradictory with the assertion of the human right to clean water. The main reason for this unjustifiable contradiction is the fact that mainstream economics and human rights do not share the same language. Indeed, one can seldom find the concept of human rights within economic reasoning with the remarkable exceptions of its explicit incorporation of property rights and its implicit references to freedom of expression. As a matter of fact, both these rights constitute essential pillars of economic rationality as there is no such thing as personal interest without property rights and, although history has given us many examples of an unnatural cohabitation of economic freedom and political repression, separating rational choice from freedom of choice and, therefore, from freedom of expression, seems hardly conceivable. In both these cases it is the instrumental value of rights, in other words the value given to the consequences of adopting rights, rather than its intrinsic value that is being considered, though. Indeed, as a result of utilitarianism, rights, as Amartya Sen pointed out, are not intrinsically important for mainstream economics (Sen, 1993: 47).

### Wants versus rights

First of all one must admit that economic theory feels more comfortable dealing with wants rather than with rights. Within economic analysis satisfying wants implies the use of concepts like prices, supply and demand, or cost and benefit, and therefore the issue is capaty to pay, in other words purchasing power. With rights, on the other hand, the issue is quite different; the heart of the matter concerns entitlement, the criteria according to which an individual should qualify to enjoy rights, purchasing power being obviously excluded, and the consequences of the use of such criteria. Furthermore, while dealing with wants economics can take shelter in a positivist approach; dealing with rights, on the contrary, pushes it to risk normative stands, adding supplementary embarrassment to economics' traditional insight.

In traditional economic theory, efficiency and equity are dealt separately. Whereas efficiency, being essentially a technical issue, can be approached through positive analysis, equity, considering its judgment value content, demands a normative approach. This separation has been severely questioned by many economists for a long time, but the fact is that within mainstream economics resources can be unequally allocated, for instance, without disturbing economic efficiency. As a matter of fact, from a normative liberal standpoint, inequality is perfectly compatible with social justice as long as the least favored layers of a community can improve their living conditions, as it ensues from the wording of John Rawls' second principle of justice (Rawls, 1972). Besides inequality, economic efficiency can also tolerate exclusion of individuals from the distribution of resources when these are fastened by tight budget constraints.

None of this, that is to say inequality and exclusion is tolerable when rights are at stake. Rights, if they are to be fully taken as rights, must be equally allocated among all those entitled to enjoy them within the community. Basic liberties, for instance, do not admit another allocation than an equalitarian one (see Rawls, 1972). Indeed, one cannot accept that some individuals may deposit more votes in the ballot box than others. Needless to remind that universal suffrage, confers one, and only one, vote to every citizen of age. Beyond the legitimate statutory exceptions, basic liberties do not admit exclusion either. If a citizen is arbitrarily excluded from participation in an election, this means not only that he was denied his right to vote but also that the right to vote is not ensured in the community to which he belongs, even if all except one are allowed to participate in the voting. Indeed, rights are either guaranteed for all or they aren't for none.

Thus, the introduction of human rights, namely economic, social and cultural rights, into the economics theoretical body, forces economics to adopt an unnatural behavior, as accept rights should mean to accept that the allocation of many goods and services must not observe market distributive rules. Economic efficiency does not oppose to this when public goods and services are concerned; but satisfying rights, economic and social rights in particular, goes beyond the definition of distributive rules referring only to public goods and services. It regards private goods and services also, as determined by the above mentioned article 11 of the ICESCR - from which the right to water has been extracted - which declares the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. As rights, housing and water not only demand a distribution such as nobody is deprived of a shelter and of water, but also that some basic qualitative criteria must be met, normative issues which traditional economics is unwilling to address.

Another aspect that can enlighten us on the divorce between economics and human rights is the fact that there is an institution within which vocabulary equity and inclusion can be found: the state. Indeed, one of the state's functions is to promote equity and inclusion in the allocation of its resources; therefore, the introduction of human rights language in economics means that the responsibility for the process of allocating private goods and services' may have to be transferred from the market to the state, or some other collective institution. Given that traditional economics abhors state intervention, seen as an unbearable interference in the market, one shouldn't be surprised if economics ends up displaying a notable distaste for a concept which contributes, precisely, to legitimize such interference.

**Utility versus Rights**

Let us now take into consideration that human rights can be interpreted as the limits of losses individuals can tolerably endure for the benefit of others (see Dworkin, 1978). Indeed, even when the promotion of noble social objectives is at stake, human rights must protect individuals, and particularly minorities, from policies that benefit the community as a whole, but which intolerably overcharge them. Promoting human rights should, therefore, institutionally guarantee that justice of means is equally important as nobility of ends. This safeguard is crucial when economics is confronted with human rights, as reaching the maximum of social utility, mainstream's political economy founding design, may collide with some individuals' utility or, in other words, rights.

Within mainstream economics the individual seeks to maximize his utility function, in other words he looks for the highest income possible. Considering all humans alike, this same mainstream economics interprets social utility as the sum of individual utilities, the utility of the community being, therefore, almost always measured by national income. This calculation system, despite being theoretically contested by many economists, has obtained, nevertheless, a recognition that overcomes the orthodox versus heterodox methodological fracture. Within this system it is perfectly conceivable, either from a formal or a moral point of view, that disutility, or negative utility, for an individual, may end up not only not affecting social utility but even contributing to raise it. Indeed, in Europe, since the 1970s, despite unemployment having been multiplied by a factor of three, meaning that many workers saw their individual utility being considerably reduced, national income (in other words social utility) kept growing vividly almost everywhere.

The introduction of rights language, on the contrary, radically changes the common welfare function. Indeed, depriving an individual from a particular right, or simply reducing its enjoyment, affects negatively the entire community. As opposed to utility, the degree in which a right is guaranteed cannot be measured by the number of individuals enjoying it, but rather by the degree in which the purpose of that right is guaranteed for every individual. Therefore, the degree of democratic participation, for instance, cannot be measured by the number of individuals benefiting from the right to vote, but rather by the extent of the decisions that are submitted to the scrutiny of all. As we have seen before arbitrarily denying an individual the right to vote is equivalent to denying it to the whole of the community; even if, taken one by one, no other citizen seems to be affected. In this case, thus, arbitrary individual deprivation of the right to vote not only affects the maximization of democracy but can also represent a deprivation of democracy for the community as a whole.

A very well-known legal dilemma in the United States, *US versus Holmes* (see Harvey, 2002) perfectly illustrates the essence of this conflict. In the beginning of spring 1841 an American ship collided with an iceberg when crossing the North-Atlantic, and rapidly sunk leaving 41 passengers and crew members squeezed in a precarious lifeboat. In spite of the lifeboat being overcharged the crew managed to keep it afloat for 24 hours thanks to favorable weather conditions. However, the following day these conditions got worse and began swamping the lifeboat hopelessly. Then, fully convinced that this precarious craft would soon sink and drag every castaway into the frozen depths of the ocean, the officer in charge of the lifeboat ordered the crew members to throw overboard every male adult unaccompanied by their wives. Fourteen men, and two women that chose the same fate as their brothers, were sacrificed. Thus relieved, the lifeboat resisted to the inclemency and by the following dawn all the remaining passengers were rescued by a ship passing at a distance.

From the strict utilitarian point of view, the officer involved limited himself to maximize social utility given the constraints in terms of the lifeboat's capacity and the weather conditions. The only alternative left to him was keeping every passenger aboard the lifeboat and condemn the lot to be swallowed by the liquid fury, depriving all, and not just a few, from their certainly very much esteemed life expectations. Comparing both solutions' final degrees of utility, sacrificing sixteen passengers was perfectly legitimate, therefore. From the rights point of view, however, the outcome is manifestly contrasting. Indeed, the sacrificed passengers were not only deprived of their lives but also of their right to live, and consequently the rescuing of the remaining passengers could be considered a criminal act. That is exactly what happened in this story when the survivors were brought ashore. Anticipating all the legal complications their decision might bring them, all crew members fled, with the exception of one, who ended up being taken to court and sentenced to six months in prison for manslaughter.

The judge who pronounced the verdict considered that the officer's procedure could have been legitimate if he had taken one of two options: the members of the crew could have been sacrificed instead of passengers, this being interpreted has the fulfillment of a duty; the sacrificed could have been either voluntary or picked by drawing lots. In both cases, the attempt on the victims' lives could have been acceptable from a rights point of view. Indeed, we strongly believe that voluntary renunciation to the right to live often constitutes a substantive assertion of this same right much more eloquent than its protection. It is the case of all those that in the course of history have died for causes they manifestly valued more than their own lives.

The verdict pronounced by the judge and his comments reveal that it was not the result of the officer's decision that was condemned, but the process that led to it. In other words it was not the maximization of social utility, the sacrifice of passengers, that was illegitimate, but the arbitrariness of the process through which the victims were picked. Bear in mind that both the officer's behavior and the alternatives proposed by the judge are equivalent in terms of result. This result, though, can be valued differently whether one looks at it from the point of view of social utility or from the point of view of individual rights. In the court's verdict social utility constitutes a perfectly legitimate goal but under no circumstances it should overrule human rights. In this sense, seeking for the maximisation of national income, for instance, can be conflicting with promoting human rights if that implies that, as a consequence, one individual is condemned to earn an income incompatible with a decent life, or to be deprived of the access to fundamental goods and services. Drawing off water from one region to the other, in other words from one community to the other, can encompass such a conflict, for example, when access to water is concerned.

## Market Hegemony and the Right to Water

One of the crucial questions one should ask about asserting the right to water, as with any human right, consists in determining which institution is better qualified to ensure every citizen the amount of water that meets both the quantitative and the qualitative requirements of the right to water. In recent years state inefficiency in delivering some public goods to all has constituted the main argument set forth by those who sustain that the market should play a more active role in providing goods and services as human rights, be it social security or water. In result we have been witnessing extensive privatization of water supply in developed as much as in developing countries. We will now argue specifically that the market is not fully equipped to play the role of a supplier of goods as human rights because, first, the market does not utter social preferences; second, is not accountable; third, is inefficient; and finally, because the water market is not a competitive market.

### The Market does not utter Social preferences

First of all, when universal rights, such as human rights, are being promoted one is asserting a social preference. In the case of the right to water one is, therefore, taken to admit that a certain degree in which people's needs are covered may be better than another. A situation in which, for instance, all the population benefits from safe tap water is better than any other. Actually, being water a human right, universal coverage is the only acceptable situation, at least as a tendency. Any situation other than universal coverage must, therefore, be considered not only inferior but also unacceptable as it could constitute a violation of a human right.

Well, in this sense, the market should have a hard time promoting the right to water simply because it does not utter social preferences, such as preferences of structure concerning, for example, income distribution or water coverage. As a result of all the information conveyed by economic agents, the market can utter many preferences, as for instance, what to produce, how and when, but it does not have arguments to assert that universal coverage is better than any other structure of water distribution. What matters for the market is that agents are satisfied, in other words that sellers are able to sell the amounts they wish at market prices, and that buyers are able to buy what they intend at the same market prices. The fact that some agents are not able to buy what they wish at market prices on account of an excessively tightened budget constraint is of almost no concern. In terms of private goods in general this may be acceptable but when private goods are taken as rights, as with tap water, exclusion becomes intolerable, as purchasing power does not constitute a reason for depriving an individual of his rights as a human being.

Therefore, and despite the fact that there are many examples of public incapacity to reach universal water coverage, especially in developing countries, like in Dar-es-Salam, Tanzania, or in Ouagadougou, Burkina-Faso, for example where less than 30% of the population is connected to the public system of water distribution (UNDP, 2006: 9), frequently because water is still too expensive for poor households (UNDP, 2006: 10), water supply by the market has proven to be a poor alternative to public distribution. In Manila, Philippines, for instance, Maynilad Water Services, which holds Manila's west zone concession, raised tariffs by as much as 400% between 1997 and 2003. Manila Water Company, the east zone concessionaire, raised water tariffs by 700% in the same period (Netto, 2005).

Considering the purchasing power of the average citizen of the Philippines it should not be difficult to predict that privatization of water distribution resulted in depriving a considerable part of Manila's population of their right to water. In some of the poorer neighbourhoods of La Paz, Bolivia, the multinational company Suez-Lyonnaise des Eaux, through its local subsidiary Aguas del Illimani, also raised water tariffs by 600% in 2004, and the objective of connecting 15.000 households to the water distribution system was cut down to zero (Chavez, 2005: 11). In result of the pressure exerted by more than six hundred district associations the government eventually revoked the concession contract with Aguas del Illimani just like it happened with the American based Bechtel in April 2000 (Chavez, 2005: 11).

Comparative history concerning water supply can also explain why the market fails in efficiently promoting the right to water in poor countries. Private companies supplying water in developed countries have inherited a heavy infrastructure paid by past public investments which supplies universal coverage to an average high-income market. In developing countries, on the contrary, limited and frequently damaged infrastructure, low levels of connection and high levels of poverty, increase the tensions between business profitability and water supply at a fair price to all. In Buenos Aires, Argentina, for example, the water concession holder managed to expand the connections to the supplying system but at a slower pace than what was agreed in the concession contract because progress was slower in the poorer areas of the city. In Jacarta, Indonesia, three quarters of the new connections concerned medium and high income households or private and public institutions (UNDP, 2006).

**The Market is not Accountable**

In mainstream economics deprivation has been seen as the outcome of either nature's random behavior or human's incompetence. In other words deprivation has resulted either from nature playing people nasty tricks or people, for whatever reason, being incapable of making the right decisions in addressing economic basic problems. The search for the good life has signified, therefore, a struggle to dominate nature, or to predict and mitigate its whims, and a quest for efficiency in human action. The rhetoric of human rights, in contrast, introduces a substantially different approach to deprivation by transforming economic problems into possible rights violations, that is to say into discriminations or structures that prevent people from exerting rights (Offenheiser and Holcombe, 2003: 275). Within the economic problems language one may have to surrender to the insolubility of deprivation; on the contrary, within the rights violations language deprivation is not inevitable and, therefore, there is no reason for tolerating that more than a billion people are deprived of a basic access to water. In rights language deprivation ceases to be seen as a fate weighing on the economies and becomes, rather, an attempt on human rights. Water deprivation should, then, be considered illegal.

Now, if one takes into consideration that in human rights language, rights of individuals correspond to duties of other individuals, in other words human rights represent the rights which individuals have on others' demeanor, then if the rights of some individuals are not ensured that is due to the fact that other individuals or institutions have failed in carrying out their duties. In human rights language, responsibility is, therefore, a key issue. When the state fails in ensuring an individual his human rights the state is accountable either legally in a court of law or politically through elections. If the market fails in ensuring human rights, whom should an individual turn to? The state is both elected and known, the market, on the contrary, is, by definition, anonymous. In this sense, the market is, therefore, not equipped to allocate rights in general and the right to water in particular.

Economics discourse, itself, favors this market unaccountability. Indeed, economics main objective, as it is taught to many undergraduate students around the world, is to give an answer to what have been called the economic basic problems. These economic basic problems consist firstly in figuring what goods should be produced, how much and when; secondly how should these goods be produced, in other words by whom and with which resources; and, finally, to whom these goods should be produced, which also means answering questions about the social distribution of benefits. Although in some of these aspects a normative approach seems inevitable, the economic basic problems are mainly positive. Even when distributional issues are at stake it is the arithmetical distributional problem that is being referred to rather than the ethical problem. In other words, the basic problem does not concern the distribution most adequate to justice but plainly the calculation of the arithmetic distribution which ensues from the application of principles of efficiency and rationality, regardless of any value judgment.

Responsibility and democratic control of water suppliers has recently proved to be a key element in reaching universal water coverage. In Porto Alegre, Brazil, for instance, water services were private until 1904; then the city took them over. Today, with the participatory budget process, a municipal management system that was created precisely in Porto Alegre, the city people get together in meetings throughout the year and decide where the investments of the Municipal Department of Water and Sanitary Sewage are going to be made. As one could expect people are mainly interested in obtaining wider access to water and sanitation and, thus, between 1989 and 1996, the number of households with access to water services rose from 80% to 98%, while the percentage of population served by the municipal sewage system rose from 46% to 85% (Netto, 2005).

## The Market is Inefficient

Water can be used by people for different purposes, from human consumption, to production activities such as transportation, industry, agriculture and fishing as well as cultural, recreational, leisure, conservation and environmental activities. Taking into consideration the diversity of uses and the indispensability of water to satisfy basic human needs, a new question is raised, which is how to hierarchize the different types of water demand. A competitive market allocates water between different alternative uses in accordance with the laws of economic efficiency. These laws only consider for human consumption the direct use value and the value of economic goods produced when water is used as an input. Now, supporting water allocation between alternative uses on laws of economic efficiency can produce inefficient social allocation, especially when the arbitrage is between human consumption and agricultural or industrial uses. Being inefficient from the point of view of human consumption, this market mediation can, then, lead to violating individual's right to water.

In this perspective, and given its crucial role to human survival, it is perfectly admissible that society sets up priorities. In this context, when water supplies are not enough to satisfy all uses it seems quite consensual that priority should be given to direct human consumption over other uses, such as leisure. As a matter of fact, this priority should be kept even when the alternative use is land irrigation. Though agriculture is vital to guarantee other human rights, like access to food, it is possible to farm without irrigation, whereas it is impossible for a human being to survive without drinking water. However, in many parts of the planet, mainly in developing countries, the lack of access to irrigation water can lead to a denial of the right to food and indirectly to a violation of the right to water in those cases where water is indispensable to produce crops.

As seen before, water is in its essence a common pool good. This classification is especially appropriate when the different alternative uses of water are hierarchized. In order to reach the optimal solution in managing common pool goods, mainstream economics can recur to game theory, namely to the prisoner's dilemma. According to this game, the best outcome for each individual user is to act selfishly while the other user acts cooperatively and the worst outcome is to act cooperatively while the other user acts selfishly. The best outcome for society and resource conservation, the one which better secures the right to water, is reached when there is cooperation among the several users of the resource. Now, this cooperation is only possible in the presence of a strong public or communitarian engagement. This outcome, if used in the arbitrage between the different alternative uses or in the allocation between users, maximizes social welfare, but demands for a mediation that is beyond the competitive market mechanism.

Furthermore, in order to overcome the conflicts that emerge when common pool resources are shared, society should promote the participation of the engaged users in the decision-making process about resource allocation and penalize selfish individual actions through material and moral sanctions, which strikes the user’s reputation. With respect to user participation and resource valuation, group valuation proposed by social and political theory has gained increasing attention recently. This valuation method is based on the principles of deliberative democracy and assumes that public decision-making should result from an open public debate rather than from the aggregation of separately measured individual preferences (see De Groot, 2006).

Social outcome validation by game theory and group valuation has been implemented for quite a while in many rural and urban communities in the management of common pool resources. The above mentioned Tribunal de las Águas de Valência is a good example of a millenary communitarian institution with given proofs in allocating a common pool good. In this case both economic and political theory and ancestral experience indicate the same path, questioning the need for alternative solutions, such as the market, to solve the allocation problem of water use.

Finally, water is exhaustible over a given period of time, which means that its use can only be renewable if the extraction rate is lower, or equal, than the recharge rate. This is a vital question since the guarantee of human rights in general and the right to water in particular does not consider any sort of term beyond which it would be acceptable for a human right to be no longer ensured, which implies that water as a human right should have a sustainable use. In such circumstances it is difficult to conciliate individual and social interests since no market mechanism can prevent the total amount of individual consumption resulting from the maximization of individual utility from exceeding the recharge rate.

## The Water Market is not Competitive

The next set of arguments against the provision of the human right to water by the market stems from the fact that real water markets do not resemble the competitive market model (see Henriques et al., 2006).

First of all, water presents physical characteristics such as mobility and property of state change which implies that it should be transported and delivered as a flow rather than as stock. Measuring and monitoring this flow is both complex and costly, which can frequently become an obstacle to determining clear property and usufructuary rights. Second, water is an irreplaceable and indispensable good and, therefore, cannot be appropriated in an exclusive regime by any given user or supplier. Third, the almost exclusive primary producer is nature which by definition does not behave as an economic agent. Fourth, for many communities water is a free gift of nature, and there are strong social, cultural and religious objections to establishing a price and consequently a market for water. Fifth, the demand for non-consumptive market uses, such as recreational and ecological, is a social want for a public good that is likely to be undersupplied by a competitive market mechanism. Sixth, the majority of consumptive water uses has side effects, such as pollution, which as an externality should be dealt within the framework of public water supply and be subjected to public control.

Finally, for technological reasons, water distribution can be considered a natural monopoly in the sense that if competition is allowed between companies in order to get hold of a concession, the consumer cannot choose his supplier as he can, for instance, with cable or telephone. If one is dissatisfied with one's cable or telephone supplier, one can change. On the contrary, one cannot change on an individual basis one's water supplier. For this set of reasons, therefore, and if economic, social and cultural rights are to be taken seriously, it is of the utmost importance that decisions concerning water distribution should be made by all those affected by that same distribution, which means that it should be submitted do democratic control, implying, thus, public, or at least mixed, rather than private management.

## Conclusion

In the previous pages we have seen that rather than charging the hidden interests in the economy, somewhat taken as illegitimate or just unethical, for the incapacity in asserting the human right to water, one should concentrate on the logic of mainstream economic discourse itself. First, economic rationality and human rights seem lost in translation. Indeed, economics postulates are intrinsically contradictory with human rights as the best possible result according to economic logic may easily constitute a violation according to human rights principles.

Second, by making the market an absolute value and an infallible means of rationally allocating goods, mainstream economics intends to reduce all categories of goods, and, thus, of rights, to only one, the commodity. This commodification of society, which is at the foundation of mainstream economics discourse, is contradictory with a society whose purpose is to enhance human rights. In this society accountability and universality are keywords and market ideology ignores both. Human rights decline, or at least stagnation, should not be seen as the outcome of doing wrongly the right economics but of rightly doing the wrong economics.

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